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No. 86-1226

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

JOHN MORRELL & CO.,
Petitioner,
v.
LOCAL 304A, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION

The opinions below, basis for invoking this Court's jurisdiction, and statutory provisions involved are correctly set forth in the Petition for Certiorari at pp. 1-2, and we therefore do not reprint those materials here.

COUNTERSTATEMENT OF THE CASE

Petitioner's statement of the case presents a fundamentally misleading impression of the relevant facts. Accordingly, we begin by setting the record straight.

Respondents United Food and Commercial Workers International Union and its Local 304A (collectively referred to herein as "the Union") are the exclusive representative of the production and maintenance employees at the Sioux Falls, South Dakota meat packing plant of petitioner John Morrell & Co. ("Morrell" or "the Employer"). The Union and Morrell are parties to a collective bargaining agreement covering the Sioux Falls plant.

Two aspects of that agreement are of relevance here:

First, the agreement contains a no-strike clause which, after noting that the parties have agreed to procedures "for the peaceful settlement of any disputes which may arise between the Company and the Union," prohibits strikes "on account of such disputes until an earnest effort has been made to settle all such matters in the manner provided in the . . . agreement[]." *See* Pet. at 3-4.

Second, the agreement establishes a four-step procedure for adjusting grievances arising under the contract and provides that "[i]f the grievance is not resolved in th[e fourth] step, the Local Union may submit it to arbitration." The agreement goes on to specify the procedure by which the Local Union may do so:

> A grievance shall be submitted to arbitration by written notice to the [Morrell] Director of Industrial Relations for the Company. Such notice shall be sent not later than six months after the Local Union has received the written answer of the Company. . . .[1]

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[1] The provisions of the collective bargaining agreement establishing the grievance-arbitration machinery are reprinted in an appendix to this Brief. Those provisions are in two parts: first, provisions that apply only to the Sioux Falls and that are contained in a "local agreement," *see* App. 1a-2a, and second, provisions that apply both to Sioux Falls and one other Morrell plant and that are contained in a "master agreement," *see* App. 2a-6a.

The agreement contains no procedure by which the Employer may file grievances or appeal grievances to arbitration, and Morell has never attempted to do so during the parties' long-standing bargaining relationship.[2]

On August 4, 1985, Local 340 of the United Food and Commercial Workers—the Local that represents the employees at Morrell's Arkansas City plant—placed a lawful picket line in front of Morrell's Sioux Falls plant in furtherance of that Local's lawful economic strike against Morrell. With a few exceptions, the Sioux Falls hourly employees declined to cross the picket line at their plant.

Believing that the refusal of its Sioux Falls employees to cross the picket line constituted a violation of the no-strike clause in the Sioux Falls collective bargaining agreement, Morrell, as was its right, immediately filed a breach of contract action in South Dakota state court seeking legal and equitable relief. That suit was removed to federal court on the day it was filed. The following day, the Arkansas City local withdrew its picket line and the Sioux Falls employees returned to work.

To penalize the employees who had failed to report to work on August 4th, Morrell noted or threatened to note each employee's absence as "unexcused" in the employee's files. On August 8, 1985, the Union filed a class grievance with Morrell alleging that any such disciplinarly action would be improper under the collective bargaining agreement. The Union's grievance thus put in issue the question whether the employees' actions had violated the no-strike provision of the agreement. To this day, more than seven months after the grievance was filed, Morrell has failed to respond to the grievance and thus the grievance remains stymied in the initial step of the grievance procedure.

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[2] Affidavit of James Lyons, December 1, 1986, ¶ 5.

On August 15, 1985, the Arkansas City Local resumed picketing the Sioux Falls plant and once again the Sioux Falls employees declined to report to work. Morrell immediately filed the instant case in federal court which, like the earlier suit, alleged a breach of contract by the Union, its officers and "John Doe and Other Persons Unknown." Morrell again sought legal and equitable relief.

On the same day that this action was filed, the district court granted a temporary restraining order against the defendants. On August 29, 1985, the district court issued a preliminary injunction which prohibited the defendants from "calling, instigating, directing, encouraging, causing, assisting or participating in a strike, work stoppage . . . or interruption with the operation of plaintiff's Sioux Falls plant . . ." Pet. App. A-21. The district court based the injunction on a finding that the second work stoppage was a "dispute over an arbitrable issue, *i.e.*, the right under the collective bargaining agreement to discipline these workers." *Id.* A-16.

Defendants appealed the preliminary injunction to the United States Court of Appeals for the Eighth Circuit. On October 30, 1986, that court reversed the injunction. The court of appeals could "find no support in the record" for the district court's finding that the August 15th work stoppage was over the discipline imposed by Morrell; indeed, that court found that the Union "has sought, not avoided, arbitration of the grievance," *Id.* A-7. That being so, the court of appeals concluded that the injunction was contrary to § 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, as that Act has been interpreted by this Court in *Buffalo Forge Co. v. Steelworkers*, 428 U.S. 397 (1976).[3]

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[3] Three weeks after the Eighth Circuit issued its decision Morrell —for the first time in this case—filed a motion to compel arbitration over the question of whether the work stoppages that occurred on August 4th and 15th were in breach of contract. The Union resisted

ARGUMENT

In its petition, Morrell states that the Company "does not seek review of the Eighth Circuit's interim ruling that the strikes at issue were sympathy strikes," and were not strikes over an arbitrable dispute. Pet. at 5 n.2. Rather, Morrell urges this Court to grant certiorari for the sole purpose of reconsidering a question that this Court resolved, after plenary consideration, in *Buffalo Forge*, a resolution which was reaffirmed less than five years ago in *Jacksonville Bulk Terminals v. Longshoremen*, 457 U.S. 702 (1982). For two independent reasons, we submit, the petition should be denied.

First, this case does not squarely raise the question petitioner attempts to tender to this Court. This is not a case in which an employer is required, or even permitted, to invoke arbitration to determine whether a work stoppage is in breach of contract, and thus this is not a case in which an injunction is sought pending arbitration. Rather, this case falls into the category of cases as to which all Members of the Court in *Buffalo Forge* agreed that an injunction is barred by the Norris-LaGuardia Act: *viz.*, a case in which the parties have *not* agreed to submit the employer's contract claims to arbitration. *See* Part I, *infra*.

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that motion on the ground that Morrell had no right, under the contract, to appeal any grievance to arbitration, and that Morrell had blocked the Union from arbitrating its grievance over the discipline by Morrell's failure to answer that grievance. By order dated December 22, 1986, the district court denied Morrell's petition to compel arbitration. Morrell's damage action is thus pending before the district court at the present time; the Union has answered and denied that the no-strike provision in the collective bargaining agreement extends to sympathy strikes.

To date, and notwithstanding the position the Union took in response to Morrell's motion to compel arbitration, Morrell still has not responded to the Union's grievance. Accordingly, that grievance remains pending in the initial step of the grievance procedure.

Second, even if the question that divided the Court in *Buffalo Forge* were presented here, petitioner has not shown any reason for reconsidering the holding of that case. Petitioner has not shown that *Buffalo Forge* has posed practical problems for labor-management relations, nor has petitioner pointed to any intervening decisions or events that call into question the Court's analysis in *Buffalo Forge*. Rather, petitioner merely rehearses the very arguments that were made to this Court in *Buffalo Forge* and again in *Jacksonville Terminals*, and that the Court properly found unpersuasive. *See* Part II, *infra*.

I. Because The Parties Have Not Agreed To Arbitrate The Employer's Breach-of-Contract Claim, This Case Does Not Pose The Question That Divided The Court in *Buffalo Forge*.

A. Section 4 of the Norris-LaGuardia Act forbids federal courts from issuing injunctions "in any case involving or growing out of any labor dispute to prohibit any person . . . from . . . [c]easing or refusing to perform any work . . ." In *Boys Markets v. Clerks Union*, 398 U.S. 235 (1970), this Court carved out an exception to Norris-LaGuardia's general anti-injunction rule in order "to accommodate and harmonize" that Act with "the congressional policy to promote the peaceful settlement of labor disputes through arbitration." *Id.* at 241. Reasoning that "the very purpose of arbitration procedures is to provide a mechanism for the expeditious settlement of industrial disputes without resort to strikes" and that this "basic purpose is obviously largely undercut if there is no immediate, effective remedy for those very tactics that arbitration is designed to obviate," *id.* at 249, the Court held that, notwithstanding Norris-LaGuardia, a strike " 'over a grievance which both parties are contractually bound to arbitrate' " may be enjoined, *id.* at 254.

In *Buffalo Forge*, this Court faced the question of whether the " 'narrow' " *Boys Market* exception, 428 U.S.

at 406, *quoting Boys Market*, 398 U.S. at 253, should be extended to a case in which "[t]he employer . . . was entitled to invoke the arbitral process to determine the legality of [a] sympathy strike," but the "strike was not *over* any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract," *Buffalo Forge*, 428 U.S. at 405, 407 (emphasis in original). The Court held that *Boys Market* was inapplicable to such a case and that Norris-LaGuardia foreclosed injunctive relief.

In reaching this conclusion, the *Buffalo Forge* Court reasoned that because the sympathy strike "had neither the purpose nor the effect of denying or evading an obligation to arbitrate," there was no need "to accommodate § 4 of the Norris-LaGuardia Act" in order "to implement the strong congressional preference for the private dispute settlement mechanisms agreed upon by the parties." *Id.* at 407-08. The Court concluded that absent such a need, the "allegation of the complaint that the union was breaching its obligation not to strike did not in itself warrant an injunction." *Id.* at 409.[4]

The dissenting Justices disagreed with the majority's first premise, arguing as follows:

> A sympathy strike in violation of a no-strike clause does not directly frustrate the arbitration process, but if the clause is not enforceable against such a

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[4] Contrary to petitioner's suggestion, *see* Pet. at 7 n.4, a number of scholars have agreed with the Court's reasoning in *Buffalo Forge* and with the result the Court reached. *See, e.g.*, Freed, *Injunctions Against Sympathy Strikes: In Defense of Buffalo Forge*, 54 N.Y.U.L. Rev. 289 (1979); Note, *Sympathy Strikes and Federal Court Injunctions*, 37 Louisiana L.Rev. 926 (1977); Comment, *Boys Markets Injunctions Against Employers: Lever Bros., Inc. v. Chemical Workers, Local 217*, 91 Harv. L. Rev. 715 (1978); Comment, *Labor Law—Buffalo Forge Co. v. United Steelworkers: The End of the Erosion of the Norris-LaGuardia Act*, 55 No. Car. L. Rev. 1247 (1977); *see also*, Note, 88 Harv. L. Rev. 463 (1974).

> strike, it does frustrate the more basic policy of motivating employers to agree to binding arbitration by giving them an effective "assurance of uninterrupted operation during the term of the agreement." [*Id.* at 423-24 (Stevens, J., dissenting).]

Significantly, however, the dissenters did *not* disagree with the majority's second premise, *viz.*, that a strike cannot be enjoined merely because the strike is in breach of contract. The dissenters thus stated an important limitation on the extent to which they believed Norris-LaGuardia allows injunctions of sympathy strikes which are in breach of contract:

> It is not necessary to hold that an injunction may issue if the scope of the no-strike clause is not a clearly arbitrable issue. If the agreement contains no arbitration clause whatsoever, enforcement of the no-strike clause would not promote arbitration by encouraging employers to agree to an arbitration clause in exchange for a no-strike clause. *Furthermore, even if the agreement contains an arbitration clause, but the clause does not clearly extend to the question whether a strike violates the agreement, then the parties' commitment to enforcement of the no-strike clause through enforcement of the arbitrator's final decision also remains unclear.* [*Id.* at 426-27 n.20 (emphasis added) (Stevens, J., dissenting).]

Thus, although the *Buffalo Forge* Court was divided over the propriety of an injunction where "[t]he employer . . . was entitled to invoke the arbitral process to determine the legality of the sympathy strike," 428 U.S. at 405 (majority opinion), the Court was *unanimous* in holding that Norris-LaGuardia precludes an injunction where the employer's right to invoke arbitration is not established.

B. The instant case falls squarely into the latter category, and thus does not raise the question that divided the Court in *Buffalo Forge* and which petitioner seeks to

tender to the Court here. As we have seen, the collective bargaining agreement between Morrell and the Union contains no provision which authorizes the Employer to file grievances, let alone to appeal a grievance to arbitration. To the contrary, the agreement provides only that "the Local Union may submit [a grievance] to arbitration." P. 2, *supra*. Thus, what the Court found to be true in *Atkinson v. Sinclair Refining Company*, 370 U.S. 238, 243 (1962), is equally true here: there is "not a word in the grievance and arbitration article providing for the submission of grievances by the company" and "no place in the contract does the union agree to arbitrate at the behest of the company." Rather, the agreement "expressly provides that arbitration may be invoked only at the option of the union." *Id.*

Accordingly, the Employer's remedy here, as in *Atkinson*, is "to take its claims elsewhere," namely to state or federal court. *Id.* And nothing in the federal policy favoring "the peaceful settlement of labor disputes through arbitration," *Boys Market*, 398 U.S. at 241, justifies interpreting Norris-LaGuardia to permit injunctions prior to a judicial adjudication of the lawfulness of a strike. Thus, on any reading of *Buffalo Forge*, this case simply does not raise any issue warranting this Court's attention.

II. Petitioner Has Not, In Any Event, Offered Any Justification For Reopening The Question That Was Settled In *Buffalo Forge*.

Buffalo Forge was decided by this Court roughly a decade ago following plenary consideration, and with the benefit of briefing not only by the parties to the case but also by four *amici curiae* (including the Chamber of Commerce and the National Association of Manufacturers). The ruling in *Buffalo Forge* was reaffirmed less than five years ago, in *Jacksonville Terminals*, in which this Court, again following plenary consideration, expressly "decline[d an] invitation" to "reconsider our de-

cision in *Buffalo Forge*." 457 U.S. at 723 n.23. *See also Complete Auto Transit Co. v. Reis*, 451 U.S. 401, 416-17 n.18 (1981).

Even if *arguendo*, this case raised the issue decided in *Buffalo Forge* and reaffirmed in *Jacksonville Terminal*, petitioner offers no justification for reopening that which this Court has so recently settled. In the main, petitioner simply rehearses the arguments that were made by the employer and its supporting *amici curiae* in *Buffalo Forge* and that failed to carry the day. *See* Pet. 10-23. The opinion in that case speaks for itself, and rather than using our own words to respond to petitioner's attack, we rest on Justice White's opinion for the Court in *Buffalo Forge*.[5]

The only new argument petitioner advances is the claim that, in practice, *Buffalo Forge* has "complicate[d] the courts' role and discourage[d] employers from agree-

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[5] It is noteworthy that the bulk of petitioner's attacks on *Buffalo Forge* are based on arguments for permitting injunctions *whenever* a strike is claimed to be in breach of contract, *regardless of whether the contract claim is arbitrable*. After all, the denial of injunctive relief "allow[s] unions to avoid express no-strike pledges," Pet. at 12, whether or not the pledge is subject to arbitration; the denial of injunctive relief will have an equal impact on employers' willingness to "agree[] to arbitration," *id.* at 18, regardless of whether a grievance over breach of the no-strike clause is itself arbitrable; and the denial of injunctive relief "effectively dispossesse[s] state courts of their right to enforce collective bargaining agreements by enjoining illegal sympathy strikes," *id.* at 22, again without regard to whether enforcement is through arbitration.

Thus, in the main, petitioner is seeking a vast *expansion* of the *Boys Market* exception to Norris-LaGuardia—an expansion which would loose that exception from its original rationale.

Petitioner advances only one point that is in any way tied to the concerns underlying *Boys Market: viz.*, that *Buffalo Forge* "marks an extreme departure from this Court's policy favoring arbitration of labor disputes over industrial warfare." Pet. at 16. That is precisely the point that was the principal subject of discussion in the opinions in *Buffalo Forge* and that the majority, for reasons stated at length in its opinion, found unpersuasive.

ing to arbitration." Pet. at 18. According to petitioner, cases subsequent to *Buffalo Forge* reveal that "[d]eciding whether a strike is a sympathy strike, as opposed to a strike over an arbitrable issue, embroils trial courts and courts of appeals in complicated and intricate hearings concerning the nature of industrial disputes and a union's motives in striking." *Id.* And petitioner further claims that the ultimate result of *Buffalo Forge* is to "discourage employers from agreeing to binding arbitration." *Id.* at 20. Petitioner is in all respects mistaken.

To begin with, petitioner's professed fear that *Buffalo Forge* has "discourage[d] employers from agreeing to binding arbitration," Pet. at 20, is wholly lacking in any empirical support. The Bureau of National Affairs most recent survey of major collective bargaining agreements finds that 99% now contain arbitration clauses, an *increase* of 3% from the figure a decade ago, when *Buffalo Forge* was decided.[6] We know of no statistical—or even anecdotal—evidence to suggest that *Buffalo Forge* has led employers to seek to eliminate arbitration procedures from labor contracts or to oppose the inclusion of such procedures.

Nor is there any merit to petitioner's suggestion that identifying a "sympathy strike" is a "complicated and intricate task." As the record in this case illustrates, there are certain easily-ascertained hallmarks of almost every sympathy strike: a group of employees (other than the employees whose conduct is at issue) are engaged in a labor dispute with their employer; in furtherance of that dispute, those employees place pickets in front of some workplace; and another group of employees, who are not directly involved in the labor dispute, elect to honor the picket line and decline to report to

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[6] *Compare* BNA, *Basic Patterns in Union Contracts* (11th ed. 1986) p. 37 with BNA, *Basic Patterns in Union Contracts* (8th ed. 1978), p. 37.

work. Given these telltale signs, most sympathy strikes are easy to detect.

To be sure, in this area, as in any other area of the law, there will be, at the margins an occasional case in which it will not be clear whether the strike is over an arbitrable issue. The rarity of such cases is illustrated by the fact that of the over one hundred and seventy lower-court cases which have relied on *Buffalo Forge* over the past decade, petitioner is able to cite only three cases, *see* Pet. at 19 n.7, in which courts allegedly have had difficulty in determining whether a strike was a sympathy strike, and even those cases do not support petitioner's claim.[7] Moreover *any* rule establishing the conditions that must be satisfied for injunctive relief—including the rule petitioner champions under which injunctions would be available whenever a court determines that a no-strike provision covers sympathy strikes—will generate some "complicated and intricate" cases. Indeed in each of the three cases petitioner cites to illustrate the alleged difficulties in applying *Buffalo Forge*, the courts would have faced precisely the same "difficulty" under petitioner's proposed rule, as in each case the determinative issue was *not* whether the strike was over an arbitrable dispute but whether the no-strike clause applied to the work stoppage at hand. *See* n.7 *supra*.

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[7] In *Tudor Fashions, Ltd. v. Romney*, 634 F.Supp. 297 (S.D.N.Y. 1986), the employer who attempted to invoke the no-strike clause, although arguably an alter ego of the signatory employer, was not a party to the collective bargaining agreement; the question for decision was whether the no-strike clause ran in that employer's favor. In *Nat'l Wrecking Co. v. Keumerow*, 606 F. Supp. 374 (N.D. Ill. 1985), the court did not reach the arbitrability issue, having determined that the strike was over an issue about which the employees had a right to strike under the no-strike clause. And in *Transcaribbean Motors Transport, Inc. v. Union de Tronquistas*, 553 F. Supp. 362 (D.P.R. 1982), which was an action for *damages* based on alleged provision breach of a no-strike clause, the scope of the arbitration—which applied only to specific enumerated cases —was readily ascertainable, but was of importance only in interpreting the scope of the narrow no-strike clause.

In sum, petitioner has failed to offer any basis to warrant reopening the issue settled in *Buffalo Forge*.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

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Grievance Procedure

46. All grievances handled through the Union, whether individual or group, shall be presented in writing and handled in the following manner:

First Step: Between the aggrieved Employee or group of Employees either with or without a Union representative and the supervisor of the department, who may elect to call in his divisional superintendent. The supervisor shall answer in writing not later than the following work day. If no satisfactory adjustment is arrived at, then:

Second Step: Between the representatives designated by the Union and the aggrieved Employee or group of Employees and the Manager of Hourly Employees or other representative designated by the Company. The Company representative shall answer in writing the second work day following unless unusual circumstances should warrant additional time to answer. If no satisfactory adjustment is arrived at, then:

Third Step: Between the representatives designated by the Union and the Manager of Personnel—Labor Relations, or other representative designated by the Company. The Company representatives hearing the grievance shall give a written answer by the third work day following unless unusual circumstances should warrant additional time to answer.

47. Fourth Step: Failure to resolve a grievance after concluding the first three (3) steps of grievance procedure, as contained in local agreement, grievances may be appealed in accordance with the provisions of Sections 84, 85 and 86 of the Master Agreement.

48. Priority Grievances: Discharge Grievances. The Union may request an immediate meeting and such re-

quest will be granted as soon as the designated Union representatives can be replaced by a qualified Employee.

49. No grievance, with the exception of those pertaining to job rates, will be processed unless filed within 30 working days of the circumstance that provoked the grievance.

50. When it becomes necessary to schedule meetings it shall be done by appointment. However, matters pertaining to discharges which cannot reasonably be delayed, may be presented at any time.

51. The Business Agent of the Union shall be allowed access to the plant at any time to conduct Union business.

52. Officers of the Union and elected stewards will be given time to handle union matters as necessary with permission from the supervisor just as soon as a replacement can be put in their places and such a request will not be unreasonably delayed.

* * * *

XXI

GRIEVANCE PROCEDURE

83. (a) The grievance procedure now in effect at each plant with respect to all steps involving representatives of the Company shall remain in effect except as changed by local agreement.

(b) Warnings, disciplinary actions or other such information concerning an Employee's individual work record which are more than two (2) years old shall not be considered in disciplinary actions.

(c) The Company shall not discharge any Employee for receiving garnishments from up to 5 creditors in any 12 month period.

(d) The Company shall not hold any conference or interview with an Employee who is the subject of any investigation or who is being interviewed in connection with the imposition of discipline or the issuance of a warning which is to be entered in the Employee's record (provided such interview or conference goes beyond the announcement of the disciplinary action or the delivery of the warning), unless the Company shall have advised the Employee of his right to be represented at such occasion by a Union representative of his choice and shall afford the Employee, if he or the Union representative so request, the opportunity to consult privately with such representative before the commencement of the meeting.

(e) No letters or notations of warning or of disciplinary action shall be entered in any Employee's personnel record unless the Company first advises the Employee of its intent to enter such writings in his record and affords him an opportunity to read such material. Upon reasonable notice, an Employee shall be afforded an opportunity to read and obtain copies of any material in the Employee's personnel record or file concerning verbal or written warnings or disciplinary action affecting such Employee or any other material in the Employee's personnel file relevant to a pending grievance which is brought on behalf of such Employee.

(f) No Employee will be required to submit to an examination by lie detector machine (polygraph), stress test evaluator or other similar device.

84. (a) When the steps in the local grievance procedure as specified in Section 83 above have been completed, grievances other than those described in the next sentence may be appealed to a step called the "National Step". Grievances involving discharge or other discipline, seniority (except for questions relating to or growing out of inter-plant transfer), and job loads may be submitted by a local union directly to arbitration if not re-

solved at the highest step of the local grievance procedure, provided that the International Union and the Company Corporate Labor Relations Department may participate in any such arbitration.

(b) When a grievance involving a matter referred to in subparagraph (a) above has been submitted to arbitration by a Local Union, the Company Director of Industrial Relations or the Director of the Packinghouse Division of the International Union may request a pre-arbitration meeting to discuss the case. Such meeting shall be requested only if the case is unusual or complex and if they agree that such a meeting may help to expedite the arbitration hearing by clarification of the issues. Such meeting shall not delay or interfere with the selection of the arbitrator and scheduling of the hearing.

85. In the National Step, the Director of Industrial Relations for the Company, or his representative, and the Director of the Packinghouse Division of the International Union, or his representative, shall meet, together with such representatives of the Local Union or of the local plant management as either shall deem necessary. If the grievance is not resolved in this step, the Local Union may submit it to arbitration. Until August 31, 1985, such meeting shall be held in a city designated by the International Union, which shall be not more than 100 miles from the plant city unless the Company agrees to a meeting in a more distant city.

86. (a) A grievance shall be submitted to arbitration by written notice to the Director of Industrial Relations for the Company. Such notice shall be sent no later than 6 months after the Local Union has received the written answer of the Company in the National Step (in the case of grievances other than those involving discharge or other discipline) or no later than 6 months after the Local Union has received the written answer of the Company in the highest step of the grievance procedure in

effect locally (in the case of grievances involving discharge or other discipline). A grievance which has not been submitted within the 6 month time limit shall be null and void and not subject to further appeal or arbitration.

(b) Grievances which are submitted to arbitration shall be presented to an arbitrator whose decision shall be final and binding on all parties involved. In making such decision, the arbitrator shall be bound and governed by the provisions of this Agreement and of the applicable local agreement or agreements at the plant in which the grievance arose, and shall be restricted to the application of said agreements to the facts relevant to the grievance. Where more than one grievance from any one plant has been submitted to arbitration and notices of such submissions have been given within 30 days of each other, either party, in the interest of economy, shall have the right to have the grievances presented to the same arbitrator at the same sitting, provided that after a total of 50 cases have been arbitrated under this Section 86(b) in such multi-grievance proceedings, either party, on written notice to the other, may reopen the question as to whether this provision with respect to such proceeding shall be retained in the Agreement. The expense of the arbitration shall be shared jointly by the parties.

(c) The parties shall establish a panel of 3 arbitrators for disputes processed pursuant to this Section 86. Unless the parties designate the panel arbitrator by mutual agreement, selection of the arbitrator from the panel shall be made in rotation, provided that if the arbitrator selected for any dispute is not available to hear or decide the dispute promptly and within the time limitations herein set forth, the next panel arbitrator in line shall be designated for such dispute.

(d) In the arbitration of any grievance, briefs shall not be submitted to the arbitrator unless either party

requests otherwise at the arbitration hearing, in which case briefs of both parties shall be delivered to the arbitrator by depositing in the mail no later than 7 days after the close of the hearing (or if either party has ordered a transcript, then no later than 21 days after the close of the hearing) and there shall be no extension of time for filing briefs. Unless the parties agree to extend the time, the arbitrator shall render his decision within 14 days after the close of the hearing or the receipt of briefs, if applicable, in a case involving discharge or other discipline and within 30 days after the close of the hearing or the receipt of briefs, if applicable, in all other cases, provided that failure of the arbitrator to render a decision within the time herein prescribed shall not invalidate his decision.

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